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Docket 83171PAL  
Customer No. 01333

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of

Donna M. Cirella, et al

PACKAGE AND METHOD OF  
MAKING SAME FOR STORING  
AND DISPLAYING PRODUCT

Serial No. 10/023,383

Filed December 17, 2001

Group Art Unit: 3728

Examiner: Jila M. Mohandesi

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*Robin G. DePoint*  
Robin G. DePoint

*March 15, 2006*  
Date

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Commissioner for Patents

P.O. Box 1450

Alexandria, VA. 22313-1450

Sir:

**APPEAL BRIEF TRANSMITTAL**

Enclosed herewith is Appellants' Appeal Brief for the above-identified  
application.

The Commissioner is hereby authorized to charge the Appeal Brief filing  
fee to Eastman Kodak Company Deposit Account 05-0225. A duplicate copy of  
this letter is enclosed.

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Enclosures

If the Examiner is unable to reach the Applicant(s) Attorney at the telephone number provided, the  
Examiner is requested to communicate with Eastman Kodak Company Patent Operations at  
(585) 477-4656.

Respectfully submitted,

Attorney for Appellants  
Registration No. 26,664



Docket 83171PAL  
Customer No. 01333

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of

Susan T. Tingey, et al

PACKAGE AND METHOD OF  
MAKING SAME FOR STORING  
AND DISPLAYING PRODUCT

Serial No. 10/023,383

Filed 17 December 2001

Group Art Unit: 3728

Examiner: Jila M. Mohandesi

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Alexandria, VA 22313-1450

Sir:

**APPEAL BRIEF PURSUANT TO 37 C.F.R. 41.37 and 35 U.S.C. 134**



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## **APPELLANT'S BRIEF ON APPEAL**

Appellants hereby appeal to the Board of Patent Appeals and Interferences from the Examiner's Final Rejection of claims 1 and 7 which was contained in the Office Action mailed August 26, 2005.

A timely Notice of Appeal was filed December 27, 2005.

### **Real Party In Interest**

As indicated above in the caption of the Brief, Eastman Kodak Company is the real party in interest.

### **Related Appeals And Interferences**

No appeals or interferences are known which will directly affect or be directly affected by or have bearing on the Board's decision in the pending appeal.

### **Status Of The Claims**

Appendix I provides a clean, double spaced copy of the claims on appeal.

### **Status Of Amendments**

An Amendment After Final dated December 1, 2005 has been entered as indicated in paragraph 7 of the Advisory Action dated December 8, 2005.

### **Summary of Claimed Subject Matter**

The claimed invention is a package 10 for storing and displaying product. The display member 10 has overlapped, closely spaced front and rear layers 14 and 16 respectively. A reusable product container 20 is removably attached in the product display member by placing extended flanges 18 of a removable attaching means 30 into the space between the closely spaced front and rear layers 14 and 16. In practice the attachment means 30 would be transparent and allow viewing of the reusable container 20. In claim 7 there is claimed an opening 60 to aid in attachment to a display.

### **Grounds of Rejection to be Reviewed on Appeal**

The following issues are presented for review by the Board of Patent Appeals and Interferences:

1. Whether claims 1 and 7 are unpatentable under 35 USC 102 over Hakun et al.

### **Arguments**

Hakun et al. discloses a stocking mask display package comprising a front and rear layer and the face of the stocking mask between the front and rear layers. The appellant's claimed invention comprises a "reusable product container for containing at least one unit of product". The appellant urges that the Hakun et al. reference does not disclose the reusable product container and therefore cannot be anticipating of the instant claims. The Examiner has stated in the response of December 8, 2005 that "Contrary to applicants argument, the outer shell (22) is referred to as the display member and the inner shell (20) and the mask (M) as the reusable product container." It is respectfully urged that this interpretation of the Hakun reference does not read on the claimed invention. Claim 1 requires a reusable product container. The mask and the rear layer of Hakun are completely separate materials and layers. They are not related in a manner than would let them form a container containing at least one unit of product. Even if the mask is somehow considered as a container, Hakun still does not anticipate the claims as only the front of the mask is between the front and rear package shells 20 and 22. The front of the mask clearly is not a container. Contrary to what the Examiner urges, inner shell 20 and the mask M are not a container. Indeed they are in contact, and even if this interpretation is utilized there is no space to contain anything. In any case, a "container" is positively claimed not just a space. Therefore, Hakun et al. is not anticipating of the invention of claims 1 and 7 as a reusable product container is not in the package.

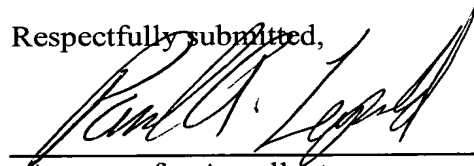
### **Summary**

Therefore, it is respectfully urged that Hakun can not anticipate claim 1 as a reusable product container is not disclosed by Hakun.

### **Conclusion**

For the above reasons, Appellants respectfully request that the Board of Patent Appeals and Interferences reverse the rejection by the Examiner and mandate the allowance of Claims 1 and 7.

Respectfully submitted,



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## **Appendix I - Claims on Appeal**

1. Package for storing and displaying product, comprising:  
a product display member having partially overlapped, closely spaced front and rear layers;  
a reusable product container for containing at least one unit of product; and,  
means for removably attaching said reusable product container to said product display member, said means for removably attaching comprising extended flange portions trapped between said partially overlapped, closely spaced front and rear layers.
  
7. The package recited in claim 1 wherein said product display member comprises an opening arranged in a top portion of said product display member to facilitate displaying.

## **Appendix II - Evidence**

None



### **Appendix III – Related Proceedings**

None